

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DWAYNE STOUTAMIRE,
Plaintiff

vs

LT. JOSEPH, et al.,
Defendants

Case No. 1:11-cv-242
Beckwith, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

Plaintiff, an inmate at the Ohio State Penitentiary and former inmate at the Southern Ohio Correctional Facility (SOCF), brings this action under 42 U.S.C. § 1983 against SOCF employees Lt. Joseph, Lt. Adkins, Correctional Officer Bower, Lt. Esham, Nurse Raub, Warden Donald Morgan, Correctional Officer Walker, Correctional Officer Craft, and Lt. Ison claiming that defendants violated his rights under the Eighth and First Amendments. This matter is before the Court upon plaintiff's motion for preliminary injunction (Doc. 12) and defendants' memorandum in opposition. (Doc. 16).

Plaintiff seeks an injunction enjoining defendants from retaliating against him for filing this lawsuit. He also seeks a Court order requiring: (1) that plaintiff always be present when officers search his cell and that the search be videotaped; (2) that each time plaintiff is escorted to the segregation unit, the escort be videotaped; (3) that defendants be enjoined from harassing or retaliating against unidentified witnesses; and (4) that SOCF institute a new mail policy to ensure that plaintiff's mail is not interfered with.

In determining whether to issue a preliminary injunction, this Court must balance the

following factors:

1. Whether the party seeking the injunction has shown a “strong” likelihood of success on the merits;
2. Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
3. Whether an injunction will cause others to suffer substantial harm; and
4. Whether the public interest would be served by a preliminary injunction.

Leary v. Daeschner, 228 F.3d 729, 736 (6th Cir. 2000); *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority*, 163 F.3d 341, 347 (6th Cir. 1998); *Southern Milk Sales, Inc. v. Martin*, 924 F.2d 98, 103 n.3 (6th Cir. 1991). The four factors are not prerequisites, but must be balanced as part of a decision to grant or deny injunctive relief. *Leary*, 228 F.3d at 736; *Performance Unlimited v. Quester Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995). A preliminary injunction is an extraordinary remedy that should only be granted if the movant carries his burden of proving that the circumstances clearly demand it. *Leary*, 228 F.3d at 739.

This Court finds that plaintiff has not alleged facts sufficient to warrant a preliminary injunction. Plaintiff has failed to present any evidence showing he has a substantial likelihood of success on the merits of his constitutional claims, or that he will suffer irreparable harm absent a preliminary injunction. Plaintiff’s allegations in his motion do not constitute evidence supporting injunctive relief. In the absence of any evidence supporting plaintiff’s motion, the motion should be denied.

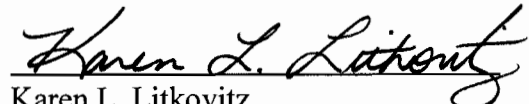
Moreover, plaintiff’s claims for injunctive relief are moot because he no longer resides at the Southern Ohio Correctional Facility. *Abdur-Rahman v. Mich. Dept. of Corrections*, 65 F.3d

489, 491 (6th Cir. 1995). “Mootness results when events occur during the pendency of the litigation which render the court unable to grant the requested relief.” *Berger v. Cuyahoga County Bar Ass’n*, 983 F.2d 718, 724 (6th Cir. 1993) (citing *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986)). Accordingly, the Court is without jurisdiction to consider plaintiff’s claims for injunctive relief.

A preliminary injunction is also not warranted in this case because the purpose of a preliminary injunction -- to preserve the status quo until a trial on the merits can be held, *see Martin*, 924 F.2d at 102 -- would not be served. The present status quo in this case is, according to plaintiff, that he has suffered numerous violations of his constitutional rights. The remedy plaintiff presently seeks is more than an injunction maintaining the status quo; he seeks an Order from this Court requiring defendants to affirmatively correct constitutional deficiencies yet to be proven. Such affirmative relief is generally beyond the scope and purpose of preliminary injunctive relief. *See id.*

Accordingly, it is **RECOMMENDED** that plaintiff’s motion for preliminary injunction be **DENIED**.

Date: 10/12/11


Karen L. Litkovitz
United States Magistrate Judge

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